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WEST. DIST. OF PENNSYLVANIA

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE DZIAMNISKI, >
>
Plaintiff >
>
vs. > Civil Action No. 07-604

KIRKPATRICK & LOCKHART >
>
Defendant >

COMPLAINT

1. The plaintiff is a resident of Finleyville, Washington County, Pennsylvania and a citizen of the United States.

2. The defendant Kirkpatrick & Lockhart (formerly Kirkpatrick, Lockhart, Nicholson Graham & currently Kirkpatrick, Lockhart, Preston Gates) is a law firm located at 535 Smithfield St., Pittsburgh, Allegheny County, Pennsylvania, United States of America.

JURISDICTION

3. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

FACTS

4. Plaintiff was employed by defendant Kirkpatrick & Lockhart as a temporary employee in April 2001 and remained in that position until being hired as a permanent employee in April 2003 as a legal clerk.

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5. Plaintiff was discharged by defendant in August 2006 as a result of a personal e-mail written to a female employee with whom plaintiff had an interpersonal relationship.

6. Plaintiff was not informed by defendant as to the specific reason of discharge regarding any misconduct involved. The e-mail in question was not written at the workplace and was written using a private e-mail account. Defendant made assumptions without discussing in detail the interpersonal aspects between plaintiff and the female employee.

7. Plaintiff had requested time off on June 6, 2006 to see a doctor because of personal issues. Plaintiff sought referral to a psychiatrist because of persistent problems sleeping in relation to a mental disorder. Plaintiff's impairment thus substantially limited a major life activity. It was clearly stated in the e-mail request to the Director of Paralegals/Clerks that plaintiff had emotional/mental health problems, and so the defendant was put on notice of this. The Director had even enquired as to plaintiff's condition upon his return to work. Any reasonable person would understand there was a mental/emotional impairment involved and cannot in good faith claim otherwise.

8. In plaintiff's absence a supervising Paralegal sent an e-mail to co-workers stating that plaintiff was "off sick," and so plaintiff was regarded as having mental/emotional problems. This was a violation of confidentiality, but nonetheless demonstrated that defendant clearly understood what this time off involved.

9. In the personal e-mail defendant used at the discharge plaintiff referred to this requested time off, and therefore defendant was again made aware of the mental/emotional aspects involved. Furthermore, in the same e-mail plaintiff stated to the female employee that he had to "attend counseling because of the negative things you had said to me." Defendant is thus aware that plaintiff is attending counseling for a mental/emotional impairment, but also that it is directly related to the behavior that defendant is basing the discharge upon.

10. Under Title I of the Americans with Disabilities Act it is considered discrimination to discharge an employee because of a mental

impairment. It was obvious that plaintiff had a mental impairment and defendant discharged plaintiff *because* of said impairment. If plaintiff is being discharged for behavior *directly related* to a mental impairment, then plaintiff is being discharged *because* of the impairment. Plaintiff was therefore discharged based upon the "myths, fears and stereotypes" of mental illness which Title I of the Americans with Disabilities Act was enacted to prevent.

11. Furthermore, defendant discharged plaintiff for reasons that did not involve *workplace* misconduct, and was not *job-related* for the position in question. There was no discussion with plaintiff to allow for any defense. Plaintiff even stated that he suffers from depression to again offer explanation for his behavior. This was ignored by defendant.

12. Plaintiff subsequently applied for unemployment compensation benefits and this was approved. Defendant did not offer evidence to the Bureau of UC Benefits to prove any willful misconduct because there was none involved. Plaintiff believes that defendant has no basis for claiming *workplace* misconduct and it is inappropriate to defend a position that was previously determined not to involve negligence on the part of the plaintiff.

13. There is abundant psychiatric literature that attests to the fact that behavioral changes are brought upon by the effects of mental impairments. Plaintiff had been diagnosed in July 2006 with major depression and has a personal/family history of mental illness. Plaintiff had discussed taking medication with a psychiatrist, but had not been prescribed anything. Plaintiff currently attends counseling for a mood disorder that involves depression and other behavioral difficulties. The symptoms of mental impairments are often manifested in behavior that is considered atypical for the sufferer. Plaintiff experienced multiple symptoms of a mental impairment during his employment with the defendant. He was, however, able to perform the essential duties of the job. Plaintiff was considered an excellent employee in work ethic and personality according to yearly evaluations that involved comments from superiors.

14. Plaintiff believes that a medical leave of absence granted by defendant would have benefited to alleviate the severe mental/emotional problems he was enduring. Plaintiff was discharged and subsequently could not afford continued medical treatment, and so his condition worsened. Plaintiff had stated to defendant that he had "suicidal thoughts," but defendant did not act to prevent the possibility of plaintiff carrying these thoughts out in action. Discharging an employee is not helping them. It is common knowledge that being fired, along with such events as death in the family and divorce, are the most stressful occurrences that can happen in one's life. Defendant acted with malice and reckless indifference in discharging plaintiff. Employers have the role of assisting employees who have difficulties, whether physical or mental. Plaintiff also asserts that defendant was not consistent in treatment of other employees in disciplinary actions.

15. Plaintiff had stated at the discharge meeting that he had suicidal thoughts, and the employer was aware of this. Plaintiff did not have a suicidal plan at the time of discharge, but later developed a plan upon purchasing a book called "Final Exit" by Derek Humphry. This book was published in the early 1990's as a guide of "self-deliverance" for the terminally ill. It has also been used a guide for suicide by severely depressed people.

16. Plaintiff filed a charge of discrimination under Title I of the Americans with Disabilities Act 42 U.S.C. § 12101-12213 with the Equal Employment Opportunity Commission. A Notice of Right to Sue has been issued.

Wherefore, the plaintiff, George Dziamniski, demands judgment against the defendant, Kirkpatrick & Lockhart, for damages related to the discriminatory actions taken. Plaintiff would like defendant to adopt a screening process that not only helps to identify employees who suffer from mental impairments and who require assistance, but to avoid unnecessary discharges based upon the myths, fears and stereotypes of mental illness. Plaintiff also seeks punitive and compensatory damages for lost wages, benefits, and severe mental and emotional harm in the amount of $10,000,000 and any other relief this Court deems just.

(PLAINTIFF REQUESTS TRIAL BY JURY)

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